U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

FILE: [redacted] Office: Miami Date: JAN 3 1 2000

IN RE: Applicant: [redacted] Public Copy

APPLICATION: Application for Permanent Residence Pursuant to Section 1 of the Cuban Adjustment Act of November 2, 1966 (P.L. 89-732)

IN BEHALF OF APPLICANT: Self-represented

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

FOR Terrance M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Miami, Florida, who certified his decision to the Associate Commissioner, Examinations, for review. The district director's decision will be affirmed.

The applicant is a native and citizen of Cuba who filed this application for adjustment of status to that of a lawful permanent resident under section 1 of the Cuban Adjustment Act of November 2, 1966. This Act provides for the adjustment of status of any alien who is a native or citizen of Cuba and who has been inspected and admitted or paroled into the United States subsequent to January 1, 1959, and has been physically present in the United States for at least one year, to that of an alien lawfully admitted for permanent residence if the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence.

The district director found the applicant inadmissible to the United States because he falls within the purview of sections 212(a)(2)(A)(i)(I) and 212(a)(2)(A)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(a)(2)(A)(i)(I) and 1182(a)(2)(A)(i)(II). The district director, therefore, concluded that the applicant was ineligible for adjustment of status and denied the application.

The applicant has provided no statement or additional evidence on notice of certification.

Section 212(a)(2) of the Act provides that aliens inadmissible and ineligible to receive visas and ineligible to be admitted to the United States include:

> (A)(i) Any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of --
>
> (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime, or
>
> (II) a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act, 21 U.S.C. 802).

The record reflects the following:

1. On July 23, 1996, in the Circuit Court of the Eleventh Judicial Circuit, Dade County, Florida, Case No. 96-21006, the applicant was indicted for Count 1, grand theft, and Count 2, burglary/unoccupied building. He was subsequently found guilty of both counts and sentenced to probation. Because he violated the terms of his probation, on June 5, 1997, the applicant was adjudged guilty of both Counts 1 and 2 and committed to the custody of the

Sheriff of Dade County for a term of 5 months followed by a period of one year of probation. The applicant again violated the terms of his probation and on November 3, 1999, he was resentenced and committed to the custody of the Department of Corrections for a term of 19 months and ordered to make restitution in the amount of $2,300 payable to the victim.

2. On April 28, 1997, in the Circuit Court of the Eleventh Judicial Circuit, Dade County, Florida, Case No. 97-11609-B, the applicant, in a 6-count indictment, was charged with Count 4, purchase or possession with intent to purchase cocaine; Count 5, possession of cocaine; and Count 6, resisting an officer without violence. On June 5, 1997, the applicant was adjudged guilty of all 3 counts and he was committed to the custody of the Sheriff of Dade County for a term of 5 months followed by a period of one year of probation, concurrent as to each count and concurrent with sentences imposed in Case No. 96-21006 (paragraph 1 above). Because the applicant violated the terms of his probation, on November 3, 1999, he was resentenced and committed to the custody of the Department of Corrections for a term of 19 months concurrent with sentences imposed in Case No. 96-21006.

Grand Theft is a crime involving moral turpitude. Matter of Chen, 10 I&N Dec. 671 (BIA 1964); Matter of Scarpulla, 15 I&N Dec. 139 (BIA 1974). Likewise, burglary (with intent to commit theft) is a crime involving moral turpitude. See Matter of R-, 1 I&N Dec. 540 (BIA 1943); Matter of M-, 2 I&N Dec. 721 (BIA 1982); Matter of Leyva, 16 I&N Dec. 118 (BIA 1977); Matter of Frentescu, 18 I&N Dec. 244, 245 (BIA 1982). The indictment report shows the applicant did unlawfully enter or remain in a dwelling without the consent of the owner or custodian, having an intent to commit theft.

The applicant is, therefore, inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act based on his convictions of crimes involving moral turpitude.

The applicant is also inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(II) of the Act based on his convictions of possession of cocaine. There is no waiver available to an alien found inadmissible under these sections except for a single offense of simple possession of 30 grams or less of marijuana. The applicant does not qualify under this exception.

The applicant is ineligible for adjustment of status to permanent resident pursuant to section 1 of the Act of November 2, 1966. The decision of the district director to deny the application will be affirmed.

ORDER: The district director's decision is affirmed.